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APR 26 2004

In re Application of
Droque et al.
Application No. 10/628,588
Filed: July 28, 2003
Attorney Docket Number: 6970.02
Title of Invention: FLUID AND BIOAEROSOL
MANAGEMENT

OFFICE OF PETITIONS

**DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)**

This is in response to the petition under 37 CFR §1.47(a), filed February 23, 2004 (certificate of mailing February 18, 2004).

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR §1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR §1.136(a).

The above-identified application was filed on July 28, 2003, without a signed oath or declaration and naming Jeffrey Droque, Leonard Schultz and Barry Thompson as joint inventors.

Accordingly, on October 27, 2003, a "Notice to File Missing Parts of Application" was mailed, requiring for the purposes of this decision, an executed oath or declaration and a \$65.00 surcharge for its late filing.

In response, on February 23, 2004, applicant submitted a petition, the \$65.00 surcharge for late filing oath or declaration fee, and a partially executed declaration naming, Jeffrey Droque, Leonard Schultz and Barry Thompson as joint inventors.

A grantable petition under 37 CFR §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and, (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) as set forth above.

As to item (1), rule 47 applicant has failed to show that co-inventor Droque was ever presented with a copy of the application papers. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). The petition and the copy of the e-mail provided states only assignment and power of attorney documents were sent to the non-signing inventor. Inventor Droque must be presented with the opportunity to sign the

application papers before rule 47 status will be granted. If rule 47 applicant mailed the application papers (specification, including claims, drawings, and oath or declaration) than such a statement and any evidence should be provided.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306

By delivery service:
(FedEx, UPS, DHL, etc.) U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.



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